U.S. Department of Justice

United States Attorney's Office
Eastern District of New York

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Brooklyn, New York 11201

November 22, 2016

VIA ECF

Hon. Steven I. Locke
United States Magistrate Judge
Eastern District of New York
100 Courthouse Drive
Central Islip, NY 11722

Re: United States of America v. Town of Oyster Bay and John Venditto, Civil Action No. CV-14-2317 (ADS/ SIL)

Dear Magistrate Judge Locke:

The United States respectfully submits this letter to request a stay of this action pending resolution of the criminal charges pending against the Oyster Bay Town Supervisor, John Venditto ("Venditto").

The United States filed this Fair Housing Act case against the Town of Oyster Bay and Venditto on April 10, 2014, challenging residency preferences in two Town affordable housing programs. The programs give incentives to developers to construct below market rate housing in exchange for greater density allowances. Because the Town is almost 90% white and less than 3% African American, the preferences discriminate against African Americans and perpetuate segregation in the Town and in Nassau County.

Since the filing of the complaint, the parties have engaged in substantial discovery and motion practice. The United States has taken 13 depositions, and the Court has authorized it to take an additional seven depositions.[1] In addition, the parties have exchanged more than 10,000 pages of documents, and the Town is currently producing more than 30,000 pages of additional records. Despite these efforts, discovery has not been completed; the depositions of at least seven additional depositions, including Venditto's, have to be scheduled, and there remain tens of thousands of pages of documents to review.

A stay of this case is appropriate because, on October 18, 2016, a federal grand jury in the Eastern District of New York handed down an indictment against Venditto charging him, *inter alia*, with conspiracy to commit federal program bribery, federal program bribery,

[1] The United States has made substantial effort to schedule these additional depositions, but has been unable to agree with defendants upon mutually convenient dates.

conspiracy to commit honest services wire fraud, honest services wire fraud and obstruction of justice. *United States v. Mangano et al.*, Docket No. CR-16-540 (Feuerstein, J.). Although the criminal charges differ from the allegations of discrimination in the instant action, both appear to involve the defendant's conduct as Town of Oyster Bay Supervisor.

Federal courts have discretion to stay civil actions in the face of a pending criminal cases where a stay serves the interests of justice. *See Crawford & Sons, Ltd. v. Besser,* 298 F. Supp.2d 317, 319 (E.D.N.Y. 2004)(Spatt, J.)("[i]t is well established that district courts have discretionary authority to stay a case when the interests of justice so require"). The parties here concur that a stay serves those interests.

Courts generally apply a variety of factors to assess whether a stay is appropriate:

> 1) The extent to which the issues in the criminal case overlap with those presented in the civil case; 2) the status of the case, including whether the defendants have been indicted; 3) the private interests of the plaintiffs in proceeding expeditiously weighed against the prejudice to plaintiffs caused by the delay; 4) the private interests of and burden on the defendants; 5) the interests of the courts; and 6) the public interest.

Louis Vuitton, S.A. v. LY USA, Inc., 676 F.3d 83, 99 (2d Cir. 2012), citing *Trustees of Plumbers and Pipefitters Nat'l Pension Fund*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995). These factors are "no more than a rough guide for the district court as it exercises its discretion." *Louis Vuitton, 676 F.3d at 99.*

It is well established that the court properly exercises its discretionary authority to stay a civil case when it threatens to interfere with a related criminal proceeding. *See United States v. Kordel*, 397 U.S. 1, 12 n.7 (1970). Denying a stay of a civil action in the face of a criminal case "may undermine the defendants' Fifth Amendment privilege against self-incrimination, expose the basis of the defendants' criminal defense in advance of trial; or otherwise prejudice the criminal or civil case." *Crawford*, 298 F. Supp.2d at 320. *See Securities and Exchange Commission v. Dresser Industries, Inc.*, 628 F.2d 1368, 1376 (D.C. Cir. 1980)("the noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(b), expose the basis of the defense to the prosecution in advance of the criminal trial, or otherwise prejudice the case.")

In this case, the interests of justice are served by a stay. Venditto is a critical witness in this case, and his deposition, which has been adjourned at least once, will involve probing and wide-ranging areas of questioning related to the creation and administration of the two housing programs which, as set forth in the complaint, are racially discriminatory. Proceeding with his deposition now, while the criminal case is pending, could implicate issues in the criminal case and implicate Venditto's Fifth Amendment rights and could force Venditto "into the uncomfortable position of having to choose between waiving [his] Fifth Amendment privilege or effectively forfeiting the civil suit." *Volmar Distributors, Inc. v. New York Post Co., Inc.,* 152 F.R.D. 36 (S.D.N.Y. 1993). Moreover, given the breadth of civil discovery, taking the depositions of other witnesses during the pendency of the criminal case against Venditto could also unwittingly implicate issues in the criminal case.

The status of the criminal case also mitigates in favor of a stay. "The key question is 'whether the criminal proceedings have substantially progressed beyond the investigatory stage to the filing of formal charges against a particular defendant, so that there is an imminent likelihood that the defendant will be subject to a criminal proceeding, including a trial, in the very near future.'" *In re 650 Fifth Avenue,* 2011 WL 3586189 * 3 (S.D.N.Y. August 12, 2015) quoting *Parker v. Donovan,* 2007 WL 2462677 (E.D.N.Y. Aug. 27, 2007). Here, the status of the criminal case is clear; an indictment has been issued.

A stay of this action, will, *inter alia,* ensure the integrity of the criminal proceeding, and protect Mr. Venditto's Fifth Amendment rights. Accordingly, for the reasons set forth above, the United States requests that the Court stay this action until the conclusion of the criminal case against Mr. Venditto.

Respectfully submitted,

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cc: Counsel for defendants (Via ECF)